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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,839	12/03/2003	Albrecht Nick	7390-X03-025	7417
27317	7590	05/24/2005	EXAMINER	
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO COURVOISIER CENTRE II, SUITE 404 601 BRICKELL KEY DRIVE MIAMI, FL 33131			FOX, CHARLES A	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/727,839	Applicant(s) NICK ET AL.	
	Examiner Charles A. Fox	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031203 &amp; 20050107</u> | 6) <input type="checkbox"/> Other: ____  |

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***Information Disclosure Statement***

The information disclosure statement filed on January 7, 2005 was lined through because it is a copy of the IDS filed on December 3, 2003. Applicant need only forward any one reference once to the office.

***Claim Objections***

Claims 3 and 5 are objected to because of the following informalities: all three claims have the language "exhibits..." which is followed by an element of the instant invention. In none of these three claims is an article used between exhibits and the element. For example the relevant passage in claim three should read "exhibits a toothed segment". Appropriate correction is required. Applicant is urged to review the specification and claims for proper English usage.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 9 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for automatic closing of the hatch, does not reasonably provide enablement for closing the hatch when the loading floor is being retracted. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. The claimed operation of the device must follow the disclosed operation of the device

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1 it is not clear what the drive elements are driving, the phrase "drive elements for driving elements" is not clear in what is being driven. Whenever two distinct items in an application share a name (element) they should be distinguished by qualifiers such as first element and second element. It is also not clear what elements are being driven for the horizontal movement of the platform. Clarification is required. In the art rejection of claim 1 below any type of drive elements are considered to move the vertical adjustment elements and cause any horizontal motion to the platform. Claims 2-9 are also rejected as they depend from claim 1 and have the same uncertainties in regards to their scope.

Also regarding claim 5 it is not clear what is "one after another". Clarification is required.

Claim 6 recites the limitation "the rack" in lines 1,2 and 3. There is insufficient antecedent basis for this limitation in the claim. No rack has previously been mentioned and it is not clear which rack "the rack" is meant to represent.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 8 are rejected under 35 U.S.C. 102(a) as being anticipated by Haid et al. In regards to claim 1 Haid et al. US2001/0036396 A1 discloses a loading floor for a vehicle comprising:

elements (3,15) for the vertical movement of a platform (1);

drive elements (19) for vertically moving said platform;

drive elements (10) for horizontal movement of said floor.

Regarding claim 2 Haid et al. further disclose that the elements for vertical movement are parallelogram in nature and at least one of said elements is driven by said drive element (19).

In regards to claims 3 and 4 Haid et al. also disclose that the parallelogram structure also has a circular toothed configuration which engages with a threaded rod (18) for raising the platform in a vertical direction.

In regards to claim 8 Haid et al. also disclose that the drive elements are electric.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haid et al. as applied to claim 1 above, and further in view of Ophardt et al. Haid et al. teach the limitations of claim 1 as above, they do not teach the drive elements as being on the lower side of the loading floor. Ophardt et al. teaches a load platform (1) with drive elements (9) provisioned on the lower side of said platform. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Haid et al. with the drive elements as taught by Ophardt et al. in order to allow for a smooth transition from the toothed segment to the straight rack segment, thereby helping to keep the pinions from binding on the rack.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haid et al. as applied to claim 1 above, and further in view of the admitted prior art. Haid et al. teaches the limitations of claim 1 as above, they do not teach the hatch of the vehicle as being automatically opened. The admitted prior art teaches a remote control device for a vehicle that is used to automatically open and close the hatch of said vehicle. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Haid et al. with the remote control capabilities of the admitted prior art in order to extend or retract the device without interfering with the hatch on the vehicle.

The prior art made of record and not relied upon, but considered pertinent to applicant's disclosure is: Werner 1960, Moller 1985, Shook et al. 1989 and Pawl 1990.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294 up to April 5, 2005 and 571-272-6923 after April 5, 2005. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600